THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.4805 of 1997

Dated: 05.02.2007

Between:

B.Ashok Kumar S/o Purnachandra Rao

.....
PETITIONER

AND

Government of Andhra Pradesh, rep., by its Principal Secretary, Revenue (Endowments) Department, Hyderaabad and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.4805 of 1997

ORDER:

In this writ petition, the petitioner challenges the order of the second respondent dated 26.02.1997, whereby the Executive Officer of the temple was permitted to fill up the post of Draughtsman Grade-III by appointing the fourth respondent, after converting his services, as he was qualified to hold the post of Draughtsman Grade-III.

The petitioner was appointed as an NMR Work Inspector in the third respondent temple on 01.12.1989. It is necessary to note that both under the

Rules, notified in G.O.Ms.No.1478 Revenue (Endowments II) Department dated 17.11.1986, or in the subsequent Rules, notified in G.O.Ms.No.888 dated 08.12.2000, the specified posts do not include that of the Work Inspector.

While Sri K.V. Satyanarayana, learned counsel for the petitioner would submit that the post of Work Inspector is equivalent to the post of a Tracer, there is nothing in the Rules to so indicate. The services of the fourth respondent were regularized not as Work Inspector, but as a Record Assistant, vide proceedings dated 29.12.1995. By the impugned proceedings dated 26.02.1997, the fourth respondent who had hitherto been absorbed as a Record Assistant was converted and appointed as Draughtsman Grade-III. The said proceedings are under challenge on the ground that the post of Draughtsman Grade-III cannot be filled up by converting the services of a Record Assistant merely because he is qualified to hold the post of Draughtsman Grade-III and that the Rules do not empower the Commissioner to convert the said post.

Sri Mehar Chand Noori, learned counsel for the fourth respondent, would submit that since the fourth respondent is admittedly senior to the petitioner, having been appointed earlier as NMR Work Inspector, he was rightly appointed to the post of Draughtsman Grade-III, in preference to the petitioner, and the mere fact that in the interregnum he was absorbed as Record

Assistant, was of no consequence, inasmuch as the said absorption was for no fault of the fourth respondent and despite his being absorbed or regularized as a Record Assistant, the services of the fourth respondent were continued to be utilized as that of a Work Inspector. Learned counsel would also submit that subsequently, vide proceedings dated 26.02.2003, the petitioner was also promoted as Draughtsman Grade-III in the third respondent temple.

It is not in dispute that both the petitioner and the fourth respondent joined in the third respondent temple as NMR work Inspectors. Appointment of both the petitioner and the fourth respondent was contrary to the Rules, more so, since there is no post of Work Inspector created under the Rules. The fact remains that the fourth respondent joined prior to the petitioner as NMR Work Inspector. While his absorption as a Record Assistant and his subsequent conversion to that of Draughtsman Grade-III may not be in accordance with the Rules, the petitioner, who was also illegally appointed contrary to the Rules, cannot be permitted to question the illegal appointment of the fourth respondent to enable him to steal a march over the latter for being appointed to the post of Draughtsman Grade-III. The appointment of the fourth respondent as Draughtsman Grade-III, prior to the petitioner being appointed in the said post, cannot be set at naught at the behest of the petitioner who admittedly is also a beneficiary of an illegal appointment. The jurisdiction

of this Court under Article 226 of the Constitution of India is exercised only in furtherance of larger public interest and not merely on the making out of a legal point. I see no reason to exercise the discretionary jurisdiction of this Court under Article 226 of the Constitution of India in favour of the petitioner.

The writ petition fails and is accordingly dismissed, however, in the circumstances, without costs.

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05.02.2007

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